

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

SHANNON BRYANT,

Plaintiff,

v.

ORDER

Civil No. 10-3414 (MJD/JSM)

ALLIANZ LIFE INSURANCE COMPANY
OF NORTH AMERICA and ALLIANZ
LIFE FINANCIAL SERVICES, LLC,

Defendant.

James H. Kaster and Sofia B. Andersson-Stern, Nichols Kaster, PLLP, Counsel for Plaintiff.

Melissa Raphan, Ryan E. Mick, and Steven J. Wells, Dorsey & Whitney LLP, Counsel for Defendants.

The above-entitled matter comes before the Court on Defendants' appeal of Magistrate Judge Janie S. Mayeron's April 19, 2012 Order granting in part and denying in part Defendants' Motion to Permit Supplemental Expert Testimony [Docket No. 171] and April 27, 2012 Order granting in part and denying in part Defendants' Motion to Preclude Testimony [Docket No. 176]. The Court has

carefully considered the entire record in this matter and concludes that oral argument is unnecessary.

A District Court will reverse a Magistrate Judge's order on a nondispositive issue only if that order is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); D. Minn. L.R. 72.2(a).

Defendants have raised objections to two of the Magistrate Judge's decisions: First, they object to the denial of their request that Plaintiff be compelled to produce her 2010 and 2011 tax returns. By a May 17, 2012 letter, Defendants have notified the Court that Plaintiff has forwarded those tax returns. This aspect of Defendants' appeal is therefore moot.

Defendants' second objection concerns the denial of their request to disclose an additional expert witness, Ted Kilkuskie. In her April 19 Order, the Magistrate Judge permitted Defendants to disclose an additional expert—Angela Heitzman—whose testimony is related to new evidence of Plaintiff's recent job search efforts. (Id. at 7.) The Magistrate Judge concluded, however, that Kilkuskie's testimony was not so related to Plaintiff's recent job search efforts and that Defendants' belated request "[did] not comport with the diligence required by the" Federal Rules of Civil Procedure or this Court's Local Rules.

(April 19 Order at 8.) The Magistrate Judge reaffirmed this decision in her April 27 Order—noting that Defendants’ “were using [their] expedited and informal motion as an alternative to a motion for reconsideration” and finding, again, no nexus between Kilkuskie’s testimony and Plaintiff’s recent job search efforts.

(April 27 Order at 6.)

The Court agrees that permitting additional testimony regarding Plaintiff’s recent job search efforts was appropriate but that Defendants’ request to provide supplementary expert opinions from Kilkuskie was not sufficiently related to new evidence as to excuse Defendants’ delay in making their request. The Court concludes that the Magistrate Judge’s Orders were neither clearly erroneous nor contrary to law.

Accordingly, based upon the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Magistrate Judge Janie S. Mayeron’s April 19, 2012 Order [Docket No. 171] and April 27, 2012 Order [Docket No. 176] are **AFFIRMED**.
2. Defendants’ appeal [Docket No. 177] is **DENIED**.

Dated: May 29, 2012

s/Michael J. Davis
Michael J. Davis
Chief Judge
United States District Court